

Company. It is true the creditors hoped that the *chose in action* would produce moneys which Asia Construction Company would use to liquidate their liabilities to them but all that the creditors themselves owned were the debts owed to them by the Asia Construction Company and they could never have supposed that they would become the owners of the Asia Construction Company's *chose in action* against Mizrahie. The agreement which is said to be embodied in the two circular letters of the 13th March and the 7th May and in the September resolution of creditors cannot therefore be interpreted as an agreement by the creditors to assign this *chose in action* to the applicant. Accordingly, in my judgment, there was no assignment such as the applicant contends for in this case, and consequently the Official Assignee cannot place a proof by the applicant on the file in substitution for the proof of any of the creditors in this bankruptcy. Furthermore, even if it were established that there had been an equitable assignment of this sum of \$35,938, I am far from satisfied that the applicant could properly substitute a proof for this sum as that would involve partial substitution and not complete substitution for the proofs of creditors. The applicant was not able to refer me to a case where partial substitution had been approved by the Court, and as the Official Assignee pointed out, it would involve him in embarrassing inquiries and difficulties in winding up a bankrupt estate, if partial substitution were allowed. However, in view of my decision on the other aspects of this case, it is unnecessary to discuss this point further.

I should perhaps mention an argument advanced during the course of the hearing, that the circular letters and the resolution of the creditors should be construed as an agreement to treat the applicant as a priority creditor in the event of Asia Construction Company going into bankruptcy or being unable to pay their creditors in full, and that if this were so, the applicant might have obtained the result he now desires if he had proved as a creditor in this bankruptcy and then asked the Court to make a suitable priority order under section 90 of the Bankruptcy Ordinance. It is, however, unnecessary to pass upon this argument since the applicant has not in fact proved as a creditor in these proceedings. For present purposes, it is sufficient to say that in my judgment the objections taken by the

Official Assignee to this application are valid and that it was his statutory duty to take them, whatever he may have thought about the merits of the applicant's claim. In my opinion the Court has no jurisdiction to make the orders sought in this application and accordingly the motion is dismissed with costs.

Motion dismissed with costs.

Solicitors: *Allen & Gledhill.*

REG. v. LIM CHIN SHANG

[A. Cr. J. (Whyatt C.J.) March 8, 1957]

[Singapore—Magistrate's Appeal No. 244 of 1956]

Societies Ordinance (Cap. 228), ss. 15 & 25 — "Insignia" — Tattoo marks not "insignia" within the meaning of the sections — Statutory presumption — Expert evidence — Prima facie case — Rebuttal.

A tattoo mark on a person's body, although it identifies him as a member of a secret society, is not an "insignia" within the meaning of section 15 of the Societies Ordinance so as to raise the statutory presumption thereunder.

Once the prosecution has established a *prima facie* case that the respondent has been identified as a member of a secret society by virtue of certain tattoo marks on his body, the onus is then on the respondent to shew that those particular marks are not the marks of the secret society, or that if they were, he was not aware of that fact when he had them tattooed on his body, or that he was, at one time, a member of the secret society but has now ceased to be such, or to repel the *prima facie* case in any other way he thinks fit.

CRIMINAL APPEAL.

Tan Boon Chiang (Deputy Public Prosecutor) for the appellant.

C. G. Toh for the respondent.

Whyatt C.J. : — This is an appeal by the Crown against a decision of the learned Magistrate acquitting the respondent on a charge of being a member of a secret society known as the 108 Group. Two questions were argued before me on this appeal; first, whether there is a statutory presumption that the respondent is a member of this secret society by reason of the fact that he has 108 Group tattoo marks on his left arm and left hand, and secondly, if there is no such presumption, whether the evidence called by the prosecution was sufficient to establish a *prima facie* case against the respondent of membership of this secret society.

The answer to the first question depends upon the construction of section 15 (1) of the Societies Ordinance, the relevant provisions of which read as follows :—

“When . . . any insignia relating to any society are found in the possession of any person, it shall be presumed, until the contrary is proved, that such person is a member of such society.”

The question for decision, therefore, is whether tattoo marks on a person's body are insignia found in the possession of a person within the meaning of this sub-section.

The first point to be considered is whether a tattoo mark on a person's body has the characteristics or attributes of a chose in possession since if it is incapable of being a chose in possession, then it follows that it cannot, as a matter of law, be found in the possession of a person. A chose in possession has been described as something which is at once tangible, movable and visible, of which possession can be taken and which can properly be put in motion and transferred from place to place (2 *Blackstone's Commentaries* page 387). But a tattoo mark, like a scar or any other distinguishing mark on a person's body, has no existence apart from the person on whose body it appears. It is visible but it is not movable; it can be obliterated but it cannot be transferred; if any one unlawfully interferes with it, he commits trespass to the person, not trespass to goods. It is true that sometimes we use expressions concerning physical characteristics of the human body which suggest they are capable of being things in possession, as for example, when we speak of a person being in full possession of his senses, but such language is used in a figurative or colloquial sense and not in the precise sense applicable to the concept of a chose in possession. In my opinion a tattoo mark or a scar or any other distinguishing mark of a permanent or semi-permanent nature on a person's body lacks those attributes which ordinarily belong to a chose in possession and consequently if such a mark is found on a person's body, it cannot be said to have been found in the possession of that person so as to bring it within the statutory language of sub-section (1) of section 15. This construction is re-inforced by the provisions of section 25 which provide that insignia belonging to an unlawful society shall be forfeited and given to the Registrar. It is to be presumed that the word insignia is used in the same sense in section 15 as in section 25

and if that is so, tattoo marks on a person's body cannot come within the meaning of insignia in section 15 since they cannot, of their nature, be forfeited and given to the Registrar. Accordingly, therefore, I am of the opinion that the learned Magistrate was right in holding that the statutory presumption under section 15 did not arise in this case.

There remains the further question whether the evidence called by the prosecution established a *prima facie* case that the accused is a member of the 108 Group. In my opinion, this was clearly established. In the first place, the prosecution called a detective who had himself been the head of this secret society from 1946 to 1948. He described in detail the various kinds of marks which members initiated into the society had tattooed on their bodies and said that the members of the society depended, not on a card of identification, but on these tattoo marks for the purpose of identifying themselves as members of the society. The detective's description of the tattoo marks fitted exactly the marks found on the respondent and therefore it follows that *prima facie* the respondent has been identified as a member of this secret society. The evidence of the detective was re-inforced by a Sub-Inspector who gave evidence as an expert, based in many years experience in the Secret Societies Branch of the Criminal Investigation Department, of the practice and usages of secret societies, including this particular secret society, but even without his evidence, there was in my view on the evidence of the detective alone, a *prima facie* case that the respondent was a member of the 108 Group. It is, of course, open to the respondent to rebut this *prima facie* case by showing that these particular marks are not the marks of a secret society, notwithstanding what the detective and the Sub-Inspector may say to the contrary, or that if they are, he was not aware of that fact when he had them tattooed on his body, or that he was, at one time, a member of this secret society but has now ceased to be such, or to repel the *prima facie* case in any other way he thinks fit. But that he should have been called upon to make his defence in this case, I have no doubt and accordingly I order that the case be sent back for re-trial.

Re-trial Ordered.

Solicitors : Braddell Bros.